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Supreme Court of the United States

OCTOBER TERM, 1982

A. ROBERT KLEINER, ROSIE BOARD, FRANCIS BROUILLETTE and ERMA LURVEY, Democratic Members of the Michigan Commission on Legislative Appointment

Appellants,

v.

RICHARD SANDERSON, CLARE DANIELS, JOHN PAYANT, and LOU ANN TAYLOR, Republican Members of the Michigan Commission on Legislative Appointment

Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

APPENDIX

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'unique features' of the Mississippi political structure as would permit a judicial protection of county boundaries in the teeth of the judicial duty to 'achieve the goal of population equality with little more than de minimis variation.'" (Emphasis supplied.) Connor, 420. That the "judicial duty" referred to is the duty of a court, generally a federal court, implementing the Fourteenth Amendment unguided by limitations on its discretion grounded in state policy, becomes clear from the other basis of decision. The Court said that the plaintiffs in that case had "submitted to the District Court an alternative Senate plan that served the state policy against fragmenting county boundaries better than did the plan the

court ultimately adopted, and also came closer to achieving districts that are 'as nearly of equal population as practicable'". The Court said "[i]n the absence of a convincing justification for its continued adherence to a plan that even in state policy terms is less efficacious than another plan actually proposed, there can be no alternative but to set aside the District Court's decree. Connor, 420-421.[32]

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[32]Justice Blackmun, who wrote Chapman, concurred in part in Connor, p 426, in an opinion joined by Chief Justice Burger, observing that he did not "understand the Court to disapprove the District Court's decision to use county lines as districting boundaries wherever possible, even though this policy may cause a greater variation in district population than would otherwise be appropriate for a court-ordered plan. The final plan adopted in this case appears to produce even greater population disparities than necessary to effectuate the county boundary policy."

B

Implicit in the Chapman/Connor rule, that there are more stringent requirements for so-called "court-ordered" remedial plans, is that a state-ordered rather than a federal court-ordered plan can be drawn pursuant to criteria different than a federal court could employ in promulgating a plan.

Although a legislature is ordinarily given the power to reapportion itself, Michigan is among the states that has allocated the power to reapportion the Legislature to a body other than the Legislature. This Court has construed the Michigan Constitution and found within it the authority to declare the policies which should govern state legislative apportionment and to

implement them.

In Connor, the United States Supreme Court spoke of the typical case (the legislature has the power to reapportion itself) that federal courts confront when they review state-initiated apportionment plans. There is no reason to suppose that the United States Supreme Court would regard a declaration by a state legislature of apportionment policy as more deserving of deference than a definitive construction by the state's highest court of the apportionment criteria that must be observed under the state's constitution.

The Court concluded, in Chapman, with the observation that "reapportionment is primarily the duty and responsibility of the State through its legisla-

ture or other body rather than of a federal court. Reynolds v Sims, 377 US 586; Maryland Committee [for Fair Representation] v Tawes, 377 US 676; 84 S Ct 1442; 12 L Ed 2d 595 (1964)." (Emphasis supplied.) The reference to Maryland Committee v Tawes has particular significance for the instant case because there the other state body was Maryland's highest court, the Court of Appeals. The United States Supreme Court thus put a state's highest court on the same level as a state's legislature for purposes of the so-called "court-ordered" plan doctrine applicable where a federal court may be proceeding to apportion in the absence of "state policy".

The United States Supreme Court clarified what it meant when it said,

in Connor, 414-415, that "a court will be held to stricter standards in accomplishing its task than will a state legislature" in the very next paragraph when it said "[t]hese high standards reflect the unusual position of federal courts as draftsmen of reapportionment plans". In the same paragraph it spoke twice again of the federal courts: "The federal courts by contrast possess no distinctive mandate", and "a federal court is left with the unwelcome obligation". (Emphasis supplied.)[33]

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[33] In Chapman, supra, 18, the United States Supreme Court declared that the standards for evaluating whether multimember districts are permissible "differ depending on whether a federal court or a state legislature has initiated the use". (Emphasis supplied.) In so holding the Court indicated that the special rule for what it characterized as a "court-ordered reapportionment scheme" (emphasis in original) was

In Gaffney v Cummings, 412 US 735, 751; 93 S Ct 2321; 37 L Ed 2d 298 (1973), the Court said that "state re-

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first adopted (Connor v Johnson, 402 US 690; 91 S Ct 1760; 29 L Ed 2d 268 [1971]) in the exercise of the Court's "supervisory power".

The United States Supreme Court has supervisory power over the federal courts. Its supervisory power does not extend to a state court. The requirements of Chapman/Connor were announced by the United States Supreme Court as limitations on the power of federal judges in promulgating remedial plans to effectuate compliance with the requirements of the Fourteenth Amendment.

Whether the Chapman/Connor rule is rooted in the Fourteenth Amendment or not, it is clear that less restrictive requirements are applicable to "state-ordered" plans. The Chapman/Connor limitation, whether announced by the Court in the exercise of its supervisory power over federal judges or as an aspect of Reynolds v Sims and therefore rooted in the Fourteenth Amendment, is not applicable to state-ordered plans. There is no reason to believe that the United States Supreme Court would distinguish between a plan drawn by a state authority on the basis of whether the authority is being exercised by one instrumentality of state government or another.

apportionment is the task of local legislatures or of those organs of state governments selected to perform it". (Emphasis supplied.)

The use of the shorthand "court-ordered" plan, Connor, p 417, the failure to say "federal court-ordered" plan, cannot properly be read as imposing the higher court-ordered plan standard on plans drawn pursuant to state law, albeit law enunciated by a state court rather than a state legislature or apportionment board or commission.

It is an axiom of federalism, recognized by the federal courts, that the federal government has no power to override state law unless it conflicts with the federal constitution. This Court's construction of the Michigan

Constitution is state law as much as any legislative enactment or executive decree. Absent infirmity under the federal constitution, this Court's construction of the Michigan Constitution would be respected by the federal courts. To apply different standards of scrutiny to apportionment plans generated from state law depending on their institutional source would permit the very encroachment on state policy that Connor and Chapman were meant to preclude.

C

In Connor, the United States district court found that Mississippi had violated the Fourteenth Amendment. The district court's discretion to mold a remedy was founded upon the need to vindicate a federal constitutional

right. This Court's decision in contrast is grounded upon the Michigan Constitution. It represents a final declaration of state law. The reapportionment plan ordered by this Court has been drawn to comply with the requirements of the Michigan Constitution and not as a temporary remedial expedient to remedy a failure to conform to the requirements of the federal constitution.

When this Court decided that the provisions of the Michigan Constitution providing apportionment rules and for an apportionment commission were no longer maintainable, it was faced with the question what law would govern redistricting and apportionment until the people acted—whether there were any state law requirements or only federal

law requirements. The Court concluded that there were state law requirements as well as federal law requirements. In directing that the redistricting and reapportionment be in accordance with the approved criteria, unless the Legislature and the Governor could agree on an alternative plan, the Court manifestly was articulating state law requirements as there are no such federal requirements.

The source of the Court's authority to provide such requirements is its power to construe the Michigan Constitution. As part of its consideration in the instant case of whether the apportionment rules and the provisions for the apportionment commission are as a matter of Michigan constitutional law severable and survived the partial

invalidity under the Fourteenth Amendment of the apportionment rules, the Court considered whether, if those provisions were not severable, a proper construction of the Michigan Constitution empowered this Court to determine how the apportionment and redistricting of the state shall be conducted in the interim before the people act.

It was the conclusion of this Court that the Michigan Constitution empowers this Court to make such determination. Implicit in the Court's decision are firstly, that the rule authorizing the drawing of a plan in accordance with the approved criteria and the rule authorizing the Legislature and the Governor to adopt a superseding plan, were both authorized by the Michigan Constitution; and secondly, what-

ever the source of those rules, they are requirements of state law rather than federal law. The Court, in the exercise of its art 6, § 1 judicial power, declared that these are state law requirements which are authorized by the Michigan Constitution.[34]

D

Assuming that the Court's remedy seeking to preserve Michigan constitutional requirements is a "court-ordered" plan within the meaning of

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[34]A federal court "remedial" plan may be ordered to provide for a failure of a state apportioning authority to exercise its power to reapportion in a manner compliant with federal constitutional requirements. This Court's "remedy" does not concern a failure to act, but the power to act. This Court's decisional "remedy" determines where the state apportioning authority resides. The exercise of that power, albeit at this Court's directive, is not, again in contrast with a federal court-ordered remedial plan, remedial of a non-exercise or of a non-compliant

Connor, it does not follow that the Apol plan is invalid when subjected to more stringent review. In Connor, the United States district court had rejected an alternative plan that conformed more closely to the state policy against fragmenting county boundaries and produced less deviation from the ideal of population equality than the plan the district court ultimately

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exercise of the state apportioning power.

This Court construed this state's constitution, in the exercise of the art 6, § 1 judicial power, and decided where the state power to reapportion resides. The Court concluded that the criteria prescribed in the constitution should be observed and applied but not by the legislative apportionment commission.

Mr. Apol is the "agent" of the Court in the sense that he was appointed by the Court. His charge, however, was to exercise the state apportioning authority in compliance with the criteria found in this state's constitution. Mr. Apol was not given broad-ranging discretion to reapportion the state, but a

adopted.

On its facts, Connor stands for the proposition that the neutrality of a court-ordered plan and the bona fides of a claim that the plan has been devised to adhere to a policy of observing local boundary lines will be questioned where alternative plans have been submitted to the court that accom-

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duty to observe and implement criteria which largely eliminate the exercise of discretion.

When questions arose regarding the application of the criteria, Mr. Apol put them to the Court, and the Court, in responding, again exercised the art 6, § 1 power to construe the constitution.

There may, indeed, be little distinction between what Mr. Apol has done and what the legislative apportionment commission would have been required to do if it had been preserved. Both derived their authority from the Michigan Constitution and both were required to observe the criteria found in the 1963 Michigan Constitution as construed by this Court.

plish this policy at less expense to federal interests.

The United States Supreme Court did not hold in Chapman that the 20% variance in maximum deviation in the plan formulated by the federal court was per se invalid. It held rather than "a population deviation of that magnitude in a court-ordered plan is

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Although this Court was not explicit regarding what state constitutional requirements would apply to a redistricting and reapportionment plan resulting from the "collective action" of the Legislature and the Governor, there is no inherent inconsistency in the alternative remedies provided by the Court: reapportionment in accordance with a plan drawn by Mr. Apol pursuant to the criteria set forth in the March 25 opinion, and reapportionment by the "collective action" of the Legislature and the Governor in a manner "consistent with federal and state constitutional requirements". While the Court did not speak to the question of what state constitutional requirements would apply to collective action of the Legislature and the Governor, they

constitutionally impermissible in the absence of significant state policies or other acceptable considerations that require adoption of a plan with so great a variance". Chapman, 24. (Emphasis supplied.) The Court then proceeded to consider whether there was a policy of maintaining local political boundary lines and concluded that the United States district court had erred in finding that North Dakota had such a state policy. The Court concluded that the "court-ordered plan" before it failed "to meet the standards established for evaluating variances in

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might well have been found to be precisely the same as the criteria set forth in the March 25 opinion. When the opinion was filed it was uncertain whether the Legislature and the Governor would be able to agree upon a plan, and indeed, in the event, they did not agree upon a plan. This Court simply did not speak to a question that it might be unnecessary to decide.

plan formulated by state legislatures or other state bodies". Chapman, 26. (Emphasis supplied.) In stating that a court-ordered plan "must be held to higher standards than a State's own plan" (emphasis supplied), the Court clearly distinguished between plans ordered by district courts and plans formulated by state legislatures "or other state bodies". The Michigan Supreme Court is an "other state body" within the intendment of that distinction; this Court, in contrast with Chapman, has declared as a matter of state law that there is a state policy of preserving local political boundary lines.

The holding, in Chapman, was that a plan for the reapportionment of a

state legislature, ordered by a court, must "ordinarily" achieve population equality with little more than de minimis variation, and, if there is more than a de minimis variation, it is the reapportioning court's responsibility to articulate precisely why a plan with minimum population variations cannot be adopted because of "important and significant state considerations [which] rationally mandate departure from these standards". Chapman, 27. It is thus clear that even a federal court may depart from population equality to achieve a state goal. The federal court would not then be acting in the exercise of discretion but rather would be guided by the state goal.

E

In conclusion, a plan is a "state-

ordered" plan for purposes of the Chapman/Connor rule, whether the plan is drawn by a legislature, an apportionment board or commission, or some other person, agent, or body who derives authority under state law, whether that authority is found in the state's constitution, a statute, or a judicial opinion of a state court. The critical question is whether the plan was drawn to comply with state and federal law requirements, or only with federal law requirements. To the extent that the plan is drawn to comply with state law requirements (as well as the federal law requirements enunciated in Reynolds v Sims), the higher Chapman/Connor standard does not apply.

The higher standard for "court-ordered" plans prescribed by the

Chapman/Connor rule applies to the extent that a court-ordered apportionment is not guided or controlled by state policy. Where a court-ordered apportionment is guided or controlled by state policy, the same reviewing standard applies to a court-ordered plan as would apply to a plan drawn by the state legislature or other state body having apportioning authority.

A federal court's determination that there is a state policy will be reviewed by a strict standard; to facilitate such review, it is the reapportioning court's responsibility to articulate precisely, and, presumably, to support with evidence, its determination that there are important and significant state considerations justifying departure from the higher stand-

ards applicable to a federal court-ordered plan drawn unguided by state policy.

The court-ordered plan doctrine does not, thus, preclude a federal court from ordering a departure from de minimis population variance to achieve a state goal.[35] The Chapman/-Connor rule simply requires that it be clear that there is such a state goal and that the departure be limited to what is necessary to achieve that goal.

[35] In Upham v Seamon, — US —; 102 S Ct 1518; 71 L Ed 2d 725 (1982), the United States Supreme Court reversed a three-judge district court because a court-ordered reapportionment plan did not observe announced state policies. The United States Supreme Court declared that a district court is not free to substitute its own completely new plan when it finds that some part of a state's reapportionment plan is violative of the federal constitution, its power being limited to making such modifications as are necessary to cure the federal constitutional deficiency.

The court-ordered plan doctrine does not impose a different standard for court-ordered plans than for plans drawn by a legislature or other state body where there is in fact a legitimate, rational state goal and the plan seeks to achieve such goal at the least cost to the federal principle of equality of population.

The court-ordered plan doctrine imposes higher standards where, although the state has not clearly identified a state goal, a federal court finds that there is a state goal.

In the instant case, this Court has determined that there is a state goal. It has the authority, although a Fourteenth Amendment claim is involved, to make that determination absent evidence that the Court's determination

is disingenuous.

No claim is made that this Court's determination is disingenuous. There clearly is adequate justification for its determination that there is a state policy of preserving political boundary lines.[36]

There is no evidence of a result impermissible under the federal constitution; it has not been asserted or shown that the result disadvantages minorities.[37]

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[36] In re Apportionment of State Legislature—1982, 413 Mich 158, supra (fns 18, 19).

[37] Even if the result disadvantages minorities, it would appear that that would not be determinative absent evidence that there was an intent to bring about that result. Whitcomb v Chavis, 403 US 124; 91 S Ct 1858; 29 L Ed 2d 362 (1971). There is no claim in the instant case that there is such intent.

IV

(1)

At the May 5 hearing on the motion for rehearing, counsel for the Democratic commissioners pointed out that while the range of divergence in Mahan was 16.4%, there were other characteristics of the plan approved in Mahan. The average deviation in the Mahan plan for both houses was ±3.89%, the corresponding figure for the revised Apol plan is ±5.18%

While Mahan could be distinguished on that basis, it does not appear that the United States Supreme Court would distinguish the instant case from Mahan on that basis. No decision of the United States Supreme Court has turned on the average deviation and, therefore, the argument based on the average

deviation is without precedential support.

It appears that the primary concern or criterion emphasized in the decisions of the United States Supreme Court is the range of divergence from absolute equality of the districts with the greatest and least population. Whether that is a correct view of the matter may become clear if the United States Supreme Court issues opinions—as it has following each decennial census—enlarging upon the views which have been expressed by the Court in the opinions filed to date. Additional expressions from the Court may not, however, be forthcoming for weeks or even another year or so.

In Mahan, following its earlier statements in Reynolds and Abate,[38] the

United States Supreme Court, in approving a Virginia legislative districting plan drawn to maintain the integrity of political subdivisions, declared that this was a rational state policy, that "[i]t can reasonably be said, upon examination of the legislative plan, that it does in fact advance that policy", that while the "16-odd percent maximum deviation * * * may well approach tolerable limits, we do not believe it exceeds them", that Virginia had "not sacrificed substantial equality to justifiable deviations" and that the population disparities "result in a maximum percentage deviation that we hold to be within tolerable constitutional

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[38] Abate v Mundt, 403 US 182; 29 L Ed 2d 399; 91 S Ct 1904 (1971).

limits". (Emphasis supplied.)

That language means that the controlling limitation is the "maximum percentage deviation". In the March 25 opinion, this Court considered the "range of allowable divergence" from the federal goal of population equality, noted that following the Mahan approval of a divergence of 16.4% courts generally have concluded that 16.4% is the range of allowable divergence, and, recognizing that the decisions of the United States Supreme Court do not impose an absolute standard, declared that the range of allowable divergence under the federal constitution shall be deemed to be 16.4% (91.8%-108.2%) until the United States Supreme Court declares otherwise.[39]

In adopting 16.4% as the range of

allowable divergence, this Court said that "[a]n apportioning authority is justified in adopting only that degree of divergence from population equality essential to achieve the state goals. Once achieved, the flexibility is at an end. Accordingly, divergence from the federal goal of population equality is permitted only to the extent necessary to permit achievement of the state goals of observing the boundary lines of local units of government and compactness." Ante, p 127.

A corollary to the concept that "an apportioning authority is justified in adopting only that degree of divergence from population equality es-

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[39] In re Apportionment of State Legislature—1982, 413 Mich 158, supra (fn 17).

sential to achieve the state goals" is the concept that an apportioning authority may or must, to achieve the state goals, adopt that degree of divergence from population equality essential to achieve them.

The state goals identified in the March 25 opinion are rooted in the constitution of this state. This Court directed that they be achieved to the maximum extent possible consistent with federal constitutional limitations. Since it was the Court's best judgment that the controlling criterion was the "maximum percentage deviation", it directed that, until the United States Supreme Court declares otherwise, the maximum percentage deviation in Mahan (for a districting and apportionment

plan drawn along the boundary lines of political subdivisions) would be deemed applicable to the districting and apportionment of the Michigan Legislature in the application of a similar criterion of following county, city, and township boundary lines.

When this Court directed that the boundary lines be drawn to maximize the achievement of those state goals within the federal limitation it did not know what the average deviation would be. Now that the plan has been prepared, it appears that the average deviation is greater for the Michigan plan than for the Virginia plan. This may be a consequence of the greater rigidity of the Michigan criteria which require that first county lines be drawn and only then (in the larger

counties having more than one senator or representative) may the city and township lines be drawn. It appears that the Virginia plan was drawn along both county and city lines without seeking to maximize the preservation first of county lines. The effort to achieve the maximum adherence to the Michigan goals of preserving the boundary lines first of counties and second of cities and townships does tend to produce concentrations of population at both ends of the 16.4% range of divergence and a higher average range of deviation than the Virginia plan. This is a result of the adherence to the state goal.

The United States Supreme Court, having stated that preservation of political subdivision boundary lines is

a rational state goal, would no doubt expect that states having such goals would seek to achieve them to the maximum extent possible consistent with federal constitutional limitations. To merely point out that the consequence of pursuit of those state goals is to bring about a higher average deviation is not to state a reason for departing from the state goal.

For the United States Supreme Court to hold that average deviation is a limitation would be to add a limitation not expressed in Mahan on the legitimate pursuit of a rational state goal. There is no reason to anticipate that the United States Supreme Court will impose such a further limitation on pursuit of the state goal of preserving the boundary lines of local

units of government.[40]

If the Court does impose such an additional limitation, it would allow the states adequate time to conform their plans to these new limitations as it would understand that, absent such a statement from the United States Supreme Court, the states would seek to maximize achievement of the state goal within the criterion that had been

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[40]Mr. Justice Brennan's opinion in chambers explaining his granting of a stay of a three-judge district court order reapportioning New Jersey for congressional districting and reinstating the legislative congressional reapportionment plan indicates that Kirkpatrick v Preisler, 394 US 526; 89 S Ct 1225; 22 L Ed 2d 519 (1969), will likely be read by the United States Supreme Ccurt as allowing the New Jersey Legislature "some latitude", thereby suggesting that the United States Supreme Court may loosen rather than tighten margins, Karcher v Daggett, — US —; 102 S Ct 1298; 71 L Ed 2d 635 (1982) (Brennan, J., in chambers).

articulated by the Court in the body of the Mahan opinion. To state it differently, the United States Supreme Court would not expect that plans would be drawn in the application of limitations drawn from a description of other features of the Virginia plan which the court did not treat as determinative in Mahan, and if the Court were to elevate such other factors to constitutional importance it would provide adequate time to make required changes.

We appreciate that the opinions of the United States Supreme Court do frequently mention average deviation as well as maximum deviation. We think that the Court might become concerned with average deviation if the plan were drawn without adherence to the kind of rigid constitutionally rooted state

criteria of the kind required to be followed in the instant case. Clusters of population at extreme limits of the range of divergence might indicate a purposeful gerrymander to achieve some impermissible goal, to the advantage of one part of the body politic over another. Where the plan has been drawn either by a state legislature or a judge or a group of judges, in the exercise of a broad ranging discretion, the United States Supreme Court might require narrower margins of average deviation to protect against abuse of discretion.

The criteria adopted by this Court, however, are intended to leave little room for the exercise of discretion. The population cluster at the outer limits of the 16.4% range of

divergence is not the result of the exercise of discretion, it does not reflect a purpose to give advantage to one group over another, but rather is simply the consequence of the Court's adherence with a high degree of faithfulness to what it perceives to be the requirements of Michigan Constitutions regarding the exercise of the power to reapportion and redistrict legislative seats. In a case such as this where it cannot be asserted that the cluster at the outer limits of the range of divergence is the result of anything operating other than adherence to the state goal, average deviation is not a determinative factor.

(2)

In Mahan, the Court, in its description of the plan there before the

Court, mentioned average percentage variance and also the minimum population percentage necessary to elect a majority and also the number of districts within 4% of perfection, 6%, and other like descriptive information.

In its analysis of earlier decisions and generally, however, the Court spoke only of the maximum percentage deviation. It referred to the congressional reapportionment cases of Kirkpatrick[41] and Wells[42] and the maximum percentage deviation in those cases. It also referred to the maximum percentage deviation in the state legislative apportionment case of Swann v

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[41] Kirkpatrick v Preisler, supra.

[42] Wells v Rockefeller, 394 US 542; 89 S Ct 1234; 22 L Ed 2d 535 (1969).

Adams[43] and the county apportionment case of Abate v Mundt. It spoke of the "16-odd percent maximum deviation" in Mahan itself. It concluded that "[t]he population disparities that are permitted thereunder result in a maximum percentage deviation that we hold to be within tolerable constitutional limits" (emphasis supplied). The dissenting opinion referred to the number of persons in districts in which the population deviation from the ideal was more than 5% and more than 3%. But none of the reasoning of the majority includes any consideration of average or median deviation.

In Mahan, the district court had modified the legislative plan, reducing

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[43] Swann v Adams, 385 US 440; 87 S Ct 569; 17 L Ed 2d 501 (1967).

the variance to slightly over 10%. The district court had divided the population of one county to the point where the Court could say that "[t]he opportunity of its voters to champion local legislation relating to Scott County is virtually nil. The countervailing benefit resulting from the court's readjustment is the fact that the first district's deviation from the ideal is now reduced to 1.8%." Of another change ordered by the district court, the Court said that "[i]n terms of practical politics, Virginia Beach complains that such representation is no representation at all so far as local legislation is concerned" and that the people transferred to reduce the deviation "have in that respect been effectively disenfranchised", p 324. It comes

through quite clearly from a reading of the Court's opinion that the Court associated itself with those arguments, and that it found them persuasive in holding that the district court had erred in modifying the legislative plan to achieve a reduction in the deviation from 16-odd% to 10%.

In Chapman, the Court spoke only of the maximum range of deviation and did not mention in its description of the plan, let alone in the argument, the average or median deviation. The Court, without referring to average or median deviation, said that in Gaffney it had "permitted a deviation of 7.83% with no showing of invidious discrimination. In White v Regester [412 US 755; 93 S Ct 2332; 37 L Ed 2d 314 (1973)], a variation of 9.9% was likewise permit-

ted." The percentage deviations referred to were maximum percentage deviations.

The Court, in Chapman, p 24, spoke of the maximum deviation as "this measure of acceptable deviation from population equality" (emphasis supplied) stating that it had been "developed in cases that concerned apportionment plans enacted by state legislatures".

In sum, median or average deviation has not been regarded by the United States Supreme Court as a relevant criterion where the deviation is justified by showing a state policy and adherence to that policy.[44] Where

[44] In deciding whether a deviation from equality is de minimis, the United States Supreme Court has adverted in its reasoning to average percentage variance. Gaffney v Cummings, 412 US 735, 742; 93 S Ct 2321; 37 L Ed 2d 298 (1973); White v Regester, 412 US 755,

the deviation is justified on state policy grounds, a maximum deviation of 16.4% is permissible without regard to the median or average deviation.

V

It is asserted that the Court has misstated Michigan history because Michigan has not used counties as the basic building blocks for legislative apportionment.

While Michigan does indeed have a history of population-based apportion-

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764; 93 S Ct 2332; 37 L Ed 2d 314 (1973). Where the deviation is de minimis, there is no need to justify the deviation on state policy grounds.

Although it is far from clear that the Court intended to limit the scope of its holding in Gaffney and White v Regester by making median or average divergence part of the analysis where it is claimed that the deviation is de minimis, the de minimis rule—not requiring justification of a deviation from equality on state grounds—was not relied on by this Court but rather the Mahan rule requiring justification on state grounds.

ment, that principle has been expressed in Michigan Constitutions together with the principle that county, city and township lines should be followed in the design of election districts.

No Michigan Constitution has provided for the allocation of legislative seats on a purely population basis. No Michigan Constitution has permitted the breaking of a single county line.[45] One can of course disagree regarding the apportionment principles that should be extracted from this history and their relative merit, but one cannot deny that throughout its history Michigan has remained firmly committed to avoiding the fragmentation of county lines and, more recently, when the popu-

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[45] In re Apportionment of State Legislature—1982, 413 Mich 158, supra (fns 18, 19).

lation of some counties reached the point where more than one legislator was apportioned to some counties, avoiding the fragmentation of city and township lines.

It is not asserted that there is not this textual historical commitment; the Court's decision is challenged because it reflects a theory of "political unit or boundary representation". It is contended that such a theory finds no warrant in Michigan history and has been disparaged by federal decisions.

This contention mischaracterizes the Court's decision and the view that it has taken of the historical record. Concededly, Michigan does not have and never has opted for apportionment of the Legislature on a "political unit" basis. But to say that Michigan has

not opted for "political unit" representation is not to say that it has not recognized the importance of political unit boundary lines and has not followed them in the drawing of election districts.

Michigan has a consistent constitutional history of combining less populous counties and subdividing populous counties to form election districts. As a result, county lines have remained inviolate. The reason for following county lines was not the "political unit" theory of representation but rather that each Michigan Constitution has required preservation of the electoral autonomy of the counties.

The argument confuses the political unit basis with drawing lines to preserve the autonomy of local political subdivisions. The United States

Senate is organized on a political unit basis—every state receives the same number of senators as every other state without regard to population. The United States House of Representatives is apportioned on a population basis; although not organized on a political unit basis, the boundary lines of the states are nevertheless preserved—no state line is broken. No representative to Congress represents people living in two separate states.[46]

[46]Much of the opinion in Reynolds v Sims, supra, pp 572-577, is devoted to a discussion of the political unit basis. In many states, at least one house was composed of the representatives of local units of government, e.g., counties, just like the United States Senate. The Court explained at great length why the Congress could be apportioned this way but a state legislature could not.

Michigan has not had that kind of legislative apportionment—one senator per county. But Michigan did subdivide populous counties and combine the less populous counties with county lines always being inviolate. The political unit theory is not implemented simply

VI

It is asserted that the Court did not provide the parties an opportunity to discuss what the proper remedy would be should the Court decide that Const 1963, art 4, §§ 2-6 were not severable and that this constitutes a denial of due process.

On February 24, 1982, the Court indicated in an order addressed to the parties that it might conclude that the federal invalidation of the weighted land area/population formulae of the 1963 Constitution terminated the authority of the apportionment commission. Both parties chose to argue that the apportionment commission survived

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by using county lines as a basis for drawing election district lines.

The political unit basis was originally adopted for representation in the county board of supervisors. See Apportionment of Wayne County—1982, 413 Mich 224, post.

the invalidation of the formulae. Neither took the opportunity to express a view as to what the Court should provide if it concluded that the commission did not survive.

One might argue that the Court asked only about the commission's survival and not about what would happen in the event the commission did not survive. This, however, would be to confine the boundaries of the question posed in an artificial and narrow manner. The question of remedy follows so closely upon the question of the commission's survival that it is, in fact, virtually the same question.

In all events the Court has provided the parties with an opportunity for oral argument and has carefully considered the arguments advanced both in the motion for rehearing and at the

hearing, and this opinion responds thereto.

VII

It was contended, at the public hearing, that the Apol plan is defective because Wayne County is entitled to 9.591 senators and should, therefore, have been apportioned 10 senators.

Wayne could, within the population variance limits of 91.8%—108.2%, be allocated either 9 or 10 senators without breaking its boundaries. If 9 senators are apportioned to Wayne, the average Wayne district is 106.5% of the statewide ideal; if 10 senators are apportioned to Wayne, the average Wayne district is 95.9% of the statewide ideal.

Similarly, in the House, Wayne County can be apportioned between 26 and 30 representatives. If 26 represent-

atives are apportioned to Wayne County, the average Wayne County district is 106.7% of the statewide ideal; if 30 representatives are apportioned to Wayne County, the average Wayne County district is 92.5% of the statewide ideal. Oakland County (immediately north of Wayne County) presents the same problem in the House, because either 12 or 13 representatives can be apportioned to Oakland County. If 12 representatives are apportioned to Oakland County, the average Oakland County district is 100.1% of the statewide ideal; if 13 representatives are apportioned to Oakland, the average Oakland district is 92.4% of the statewide ideal.

The criteria approved by the Court do not address this apportionment question directly, but leave it to be

decided implicitly by the other criteria. Whether Wayne County is apportioned 9 or 10 senators is determined by identifying the one Senate plan that breaks the fewest county lines statewide, or shifts the fewest cities or townships statewide, or shifts the fewest people statewide.[47]

Wayne County is apportioned 9 senators in both the Apol and Ketron Senate plans. Although Mr. Apol was able to discover a Senate plan that apportioned 10 senators to Wayne and broke 4 county lines (the same number of county line breaks as in Mr. Apol's April 27 plan), that 10-senator plan was not the best plan because it required a shift of 9 cities or townships statewide, while

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[47] See part IB, ¶ 7, supra.

Mr. Apol's April 27 plan, which apportioned Wayne 9 senators, required a shift of only 7 cities or townships statewide.

In the House, both Mr. Apol and Ketron, Inc., working independently, generated House plans that broke 10 county lines, and both plans apportioned Wayne 29-1/2 representatives (the additional population to complete the 30th district in both plans was drawn from Monroe County) and apportioned Oakland 12 representatives.

In light of the political importance of this apportionment decision, consideration was given to whether there is another, direct method of fairly resolving the apportionment question first; only after the apportionment question had been resolved would

the search begin for the plan with the minimum number of county line breaks statewide.

The framers of the 1963 Constitution considered a similar problem, the precise number of legislators to whom the larger counties as a group and the smaller counties as a group are, in the application of the constitution's apportionment rules, fairly entitled. Although this Court has held that those apportionment rules do not survive the invalidity under the Fourteenth Amendment of the weighted land area/population formulae, the constitution does suggest a method for resolving the apportionment question.

For the Senate, the constitution provided in art 4, § 2, that counties with 13 or more apportionment factors

shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state, "computed to the nearest whole number". There were a total of 500 apportionment factors to be allocated to all the counties, 400 on the basis of county population and 100 on the basis of county land area.

The significance of the number 13 becomes clear if one multiplies it by 38 (the number of senators to be allocated). The result is 494.

The constitution thus provided that in determining the apportionment of senators between the counties, the counties shall be divided into two classes—those entitled to one or more senators and those entitled to less

than one senator. It was recognized that in such a situation it would be necessary to decide whether the more populous or less populous counties, and which county among them, would be entitled to the odd senator. The constitution provided a simple and fair means of resolving that question, which is based in part on the "method of equal proportions" used in the decennial apportionment of congressmen among the states.[48] If the nearest whole number gave it to the large counties, so be it; and if it gave it to the smaller counties, so be it.

Applying this formula (and, by

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[48]See Convention Comment, Const 1963, art 4, § 2.

dividing all the numbers by five,[49] eliminating the weighted land area/population formulae), it appears that Wayne County was not entitled to a tenth senator:

County	Number of Senators*	Number of Senators**
Wayne	9.591	9
Oakland	4.151	4
Macomb	2.849	3
Kent	1.823	2
Genesee	1.848	2
Ingham	1.130	1
Washtenaw	1.086	1
	22.478	22

* Number of Senators to Which Entitled Based on Population.

** Number of Senators Assigned in the April 27 and in the Revised Apol Plan.

The Constitution provided a different method of apportionment in the House,

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[49] 13 5 = 2.6 X 38 Senators 98.8. Accordingly, a county with at least 2.6% of the state's population would have been part of the larger county group.

but that method cannot be applied after the invalidation of the weighted land area/population formulae..[50]

It would however, be possible to apply the Senate apportionment method in both houses. In the Senate, Wayne County would be entitled to 9 senators.

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[50]The House formula provided that any county with at least 0.7% of the state population constituted a representative area, and counties with less than 0.7% should be combined with other small counties until there was a total population of at least 0.7%. (The convention comment to art 4, §3, states that, based on the 1960 census, there would have been 40 such legislative areas.) After each area was apportioned one representative, the remaining representatives were to be approtioned to the representative areas by the method of equal proportions. That method cannot be applied today because such representative areas are no longer permissible under the federal constitution because they create excessive population divergence. One cannot first district the state and then examine the districts to determine the number of representatives Wayne and Oakland Counties are entitled to, because any such districting necessarily decides the question.

In the House, Wayne County would be entitled to 28 (not 29-1/2) representatives and Oakland County would be entitled to 12 (it was apportioned 12).[51]

The flaw in this method is that

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County	Number of Representatives*	Assigned Apol Plan**
Bay	1.423	1
Eaton	1.049	1
Genesee	5.349	5
Ingham	3.272	3
Jackson	1.799	2
Kalamazoo	2.522	3
Kent	5.279	5
Lenawee	1.068	1
Livingston	1.191	1
Macomb	8.249	8
Monroe	1.599	2
Muskegon	1.871	2
Oakland	12.016	12
Ottawa	1.866	2
Saginaw	2.708	3
St. Clair	1.648	2
Washtenaw	3.144	3
Wayne	27.765	28
	83.818	84

* Number of Representatives to Which Entitlement Based On Population.
** Assigned in the April 29 Apol Plan

it artifically divides the counties into two groups, treating one group differently than another, thereby possibly generating results at least as questionable as those generated by the method the Court had adopted in and pursuant to the March 25 opinion. For example, in the Senate, Kalamazoo County is entitled to 0.8713 senators. Because Kalamazoo County is entitled to less than one senator, it would be grouped with all the other counties entitled to less than one senator. Kalamazoo County's ultimate fate—whether Kalamazoo County residents will be slightly underrepresented or slightly overrepresented—will be decided by the indirect method of choosing the one plan that breaks the fewest county

lines statewide, or shifts the fewest cities or townships statewide, or shifts the least population statewide. For the same reasons that Wayne County residents regard as cruicial the decision whether Wayne County is apportioned 9 senators, making each Wayne County district slightly underrepresented, or 10 senators, making each Wayne County district slightly overrepresented, Kalamazoo County residents regard as crucial the size and character of the district they are ultimately placed in.

While Kalamazoo County's representation is indeterminate, this method would guarantee to Genesee County, which is entitled to 1,848 senators, two full senators. Such a two-tier method of apportionment would be un-

just. If Genesee County, at 1,848, is "entitled" to a second senator, why is Kalamazoo County, at 0.8713, not "more entitled" to a first senator?

It is no answer to say that the federal constitution does not permit the allocation to Kalamazoo County of a full senator. The Kalamazoo County line could be broken in such a way as to shift the necessary number of people from an adjacent county to bring the Kalamazoo County district just within the 91.8%-108.2% range. The Michigan rule of following county lines to the fullest extent this is possible statewide consistent with federal limitations would then have to yield to such a concept of justice and "entitlement" in the apportionment of legislators. The historical practice of following

county lines never rose to the level of a principle of justice; it has always been simply a device for controlling gerrymandering, facilitating elections and preserving communities of interest.

Once the rule of following county boundary lines yielded to the principle of "entitlement", the Court could not pretend to have a neutral and objective set of guidelines. Subjective decisions would have to be made concerning which counties are most "entitled" to be overrepresented, and more subjective decisions would have to be made regarding how such an "entitled" county's preferential county line break should be accomplished.[52]

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[52]It is not being suggested that the framers made a mistake in adopting this rule. The apportionment system set forth in the constitution was a del-

The Court's adopted method of apportionment—indirect apportionment by minimizing the number of county line breaks statewide—yields admittedly arbitrary results. That is also, however, its principle virtue: it provides an objective and neutral resolution to an intractable problem. Perhaps the Court would not implement the results of this method if it had produced a different result—for example, if Wayne County were underrepresented in both houses—but given the actual result, with Wayne County overrepresented in one house and underrepresented in the other, the Court implements the results of this admittedly imperfect method.

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icate system of compromises; the smaller counties might lose unjustly under this apportionment rule, but would benefit under the weighted land area/population formulae.

VIII

At the public hearing and in written submissions it has been urged that the Court should amend the criteria to include the concepts of "political fairness" and preservation of existing legislative districts.

There are many concepts of political fairness: partisan political fairness, racial political fairness, ethnic political fairness, sexual political fairness, and, for persons interested in particular issues, issue political fairness. Implicit in the decision of the Court and its failure to amend the criteria is its decision that the Michigan Constitution and state law does not comprehend the criterion of political fairness.

While continuity of representation is indeed a value, it is a value which finds expression in the concept of preserving the autonomy of local political subdivisions. If preservation of existing political subdivisions had been more assiduously pursued in the 1972 legislative apportionment, there would, in the 1982 legislative apportionment, have been perforce greater perservation of existing legislative districts. It is again relevant that the 1972 apportionment, before Mahan was decided, was based on a mistaken reading of the reach of Reynolds v Sims.[53]

While the 1963 Constitution pro-

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[53] In re Apportionment of State Legislature—1982, 413 Mich 117, supra (part II, A).

vides for the preservation of existing Senate districts in the less populous parts of the state (where counties are combined to form a district),[54] it does not contain a like requirement for the more populous counties and contains no such requirement for the House, thereby implicitly rejecting preservation of existing districts as a factor for Senate districts in counties entitled to one or more senators and for all House districts.

IX

The Court has retained jurisdiction with a view to ordering such changes in the plan as may be required to overcome errors or omissions and to

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[54]Const 1963, art 4, § 2, ¶ (2); see In re Apportionment of State Legislature—1982, 413 Mich 158, supra (fn 19).

provide for an orderly election and to make any changes required to comply with a superseding opinion.[55]

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[55] In Scott v Germano, 381 US 407, 408-409; 85 S Ct 1525; 14 L Ed 2d 477 (1965), the Illinois Supreme Court, after holding the apportionment of the Illinois Legislature unconstitutional in People v Kerner, 32 Ill 2d 212, 225; 205 NE2d 33 (1965), "retained jurisdiction of the case 'for the purpose of taking such affirmative action as may be necessary to insure that the 1966 election is pursuant to a constitutionally valid plan'". The United States district court, which was conducting proceedings on the same question simultaneously, declined to delay its own proceedings until the Illinois Supreme Court could complete its efforts to ensure a constitutional reapportionment plan. The United States Supreme Court reversed: "We believe that the District Court should have stayed its hand. The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged." Similarly, see Silver v Jordan, 263 F Supp 627 (CD Cal, 1966).

This Court will act expeditiously to provide a hearing and prompt adjudication of all state and federal issues that may be further presented by the parties, their privies and all persons who may not now be precluded by "law or usage in the courts" of this state (28 USC 1738) by reason of the orders entered in this proceeding. See text accompanying fn 28.

APPENDIX A

COUNTY, CITY AND TOWNSHIP LINE BREAKS

SENATE

County Line Breaks

District 11

The following one township of Washtenaw County was moved to create a district.

Washtenaw County		
Saline Township	1,221	
Lenawee County	89,948	
Monroe County	134,659	225,828

District 13

The following 3 cities and townships of Kalamazoo County were moved to create a district. (Note: 43 people of Kalamazoo Township are located within an island in Kalamazoo city -

not considered a movement of a township.)

Kalamazoo County		
Cooper Township	8,434	
Kalamazoo city		
+43 people Kalamazoo Township	79,765	
Richland Township	4,677	
	92,876	
Barry County	45,781	
Ionia County	51,815	
Montcalm County	47,555	238,027

District 31

The following one township of Ottawa County was moved to part of Kent County to create a district.

Ottawa County		
Jamestown Township	3,546	
Kent County (part)	220,355	223,901

District 20

The following one township of Ingham County was moved to create a district.

Ingham County		
Delhi Township	17,144	
Calhoun County	141,557	
Eaton County	88,337	247,038

SENATE

City/Township Line Breaks

One city line was broken (Detroit).

District 10

Wayne County

The following population of the City of Detroit was moved to create a district.

Detroit (part)	17,168	
Wayne County (part)	241,518	258,686

HOUSE

County Line Breaks

District 45

The following 4 cities and townships of Cass County were moved to Van Buren County to create a district.

Cass County		
Dowagiac city	6,307	
Pokagon Township	2,394	
Silver Creek Township	3,361	
Wayne Township	2,699	
	14,761	
Van Buren County	66,814	81,575

District 54

The following 2 townships of Barry County were moved to Allegan County to create a district.

Barry County	
Thornapple Township	4,298

Yankee Springs Township	2,251	
	6,549	
Allegan County	81,555	88,104

District 23

The following 2 cities and townships of Ingham County were moved to Jackson County to create a district.

Ingham County		
Leslie city	2,110	
Leslie Township	2,190	
	4,300	
Jackson County (part)	74,016	78,316

District 21

The following 2 townships of Wayne County were moved to part of Monroe county to create a district.

Wayne County		
Huron Township	9,849	

Sumpter Township	11,112	
	20,961	
Monroe County (part)	56,415	77,376

District 48

The following 2 cities and township of Calhoun County were moved to part of Kalamazoo County to create a district. (Note: There is a township island of Battle Creek Township consisting of 5 people which is wholly contained within the City of Battle Creek and is not considered a movement of that township.)

Calhoun County		
Bedford Township	10,157	
Battle Creek city +		
5 people of Battle		
Creek Township	35,729	
	45,886	
Kalamazoo County		

(part)	42,089	87,975

District 87

The following 3 townships of Livingston County were moved to Shiawassee County to create a district.

Livingston County		
Cohactah Township	2,436	
Deerfield Township	2,611	
Oceola Township	4,175	
	9,222	
Shiawassee County	71,140	80,362

District 102

The following 2 cities and township of Gratiot County were moved to Midland County to create a district.

Gratiot County		
Bethany Township	1,526	
St. Louis city	4,107	
	5.633	
Midland County	73,578	79,211

District 86

The following 3 townships of Bay County were moved to part of Saginaw County to create a district.

Bay County		
Bangor Township	17,494	
Hampton Township	10,418	
Merritt Township	1,676	
	29,588	
Saginaw County (part)	56,094	85,682

District 84

The following 3 townships of Tuscola County were moved to Lapeer County to create a district.

Tuscola County		
Arabela Township	3,192	
Millington Township	4,429	
Watertown Township	2,122	
	9,743	
Lapeer County	70,038	79,781

District 78

The following 4 cities and townships of St. Clair County were moved to Sanilac County to create a district.

St. Clair County		
Burtchville Township	3,069	
Clyde Township	4,632	
Fort Gratiot Township	8,496	
Port Huron city	33,981	
	50,178	
Sanilac County	40,789	90,967

Summary: In the House Plan there are 10 county line breaks involving the movement of 27 cities and townships.

HOUSE

City and Township Line Breaks

District 32

Wayne County

The following population of Allen Park city was moved to Dearborn Heights city to create a district.

Allen Park city (part)	15,687
Dearborn Heights city	67,706
	83,393

District 33

Wayne County

The following population of Westland city was moved to Garden City and Inkster city to create a district.

Westland city (part)	6,955

Garden City	35,640
Inkster City	35,190
	77,785

District 34

Wayne County

The following population of Livonia was moved to Redford Township to create a district.

Livonia city (part)	22,991
Redford Township	58,441
	81,432

District 37

Wayne County

The following population of Canton Township was moved to create a district.

Canton Township (part)	13,846
Bellevue city	3,366

Romulus city	24,857
Van Buren Township	18,940
Wayne City	21,159
	82,168

District 66

Oakland County

The following population of Troy city was moved to create a district.

Troy city (part)	28,445
Hazel Park city	20,914
Madison Heights city	35,375
	84,734

District 26

Macomb County

The following population of Sterling Heights city was moved to create a district.

Sterling Heights city (part)	20,098
Macomb Township	14,230
Shelby Township	38,939
Utica city	5,282
Washington Township	10,213
	88,762

District 74

Macomb County

The following population of East Detroit city was moved to create a district.

East Detroit city (part)	7,639
Lake Township	110
St.Clair Shores city	76,210
	83,959

District 52

Washtenaw County

The following population of the City of Ann Arbor was moved to create a district.

Ann Arbor city (part)	22,531
Washtenaw County (part)	66,316
	88,847

District 58

Ingham County

The following population of Lansing city was moved to create a district.

Lansing city (part)	45,387
Ingham County (part)	45,071
	90,458

District 81

Genesee County

The following population of Flint Township was moved to part of the City of Flint to create a district.

Flint Township (part)	21,270
Flint city (part)	69,515
	90,785

District 46

Kalamazoo County

The following population of Kalamazoo Township was moved to create a district.

Kalamazoo Township (part)	9,494
Kalamazoo City	79,722
	89.216

Summary: The following cities and townships were split—

County	City/Township	Population Moved
Wayne	Allen Park city	15,687
	Westland city	6,955
	Livonia city	22,991
	Canton Township	13,846
Oakland	Troy city	28,445
Macomb	Sterling Heights city	20,098
	East Detroit city	7,639
Washtenaw	Ann Arbor city	22,531
Ingham	Lansing city	45,387
Genesee	Flint Township	21,270
Kalamazoo	Kalamazoo Township	9,494

Note: The Cities of Grand Rapids and Warren were also split to create two districts each within each city.

The City of Detroit was also split to create 17 districts within its limits and including Highland Park, Hamtramck, Harper Woods and the Grosse Pointes cities and townships.

APPENDIX B

POPULATION AND VARIANCES

HOUSE

There are 54 districts under average population and 56 districts over average population.

The average population over an ideal district is 4190.8. The average population under the ideal district is 4346.6. The average variance is 4268.7.

The average percentage variance from ideal is 4.98% over and 5.16% under the average percent of variance is 5.07%.

The median deviation from average is 4955.5.

The difference between the smallest and largest district is 13,774.

The maximum difference from ideal is plus 6870 (8.16%) and minus 6904 (8.20%).

The population of the 56 smallest districts (needed for majority in House) is 4,481,71 which is 48.38%.

There are:

39 districts within 4% of ideal

52 districts exeeding 6% of ideal

32 districts within 3% of ideal

64 districts exceeding 5% of ideal

The ratio of the largest district to the smallest district is 1.17 to 1.

The number of county breaks is 10.

The number of city/townships moved

over a county line is 27.

The number of city/township lines broken is 13.

SENATE

There are 19 districts over average population and 19 districts under average population.

The average population over and under ideal is 12,264.4 over and 12,264.6 under.

The average variance is 12,264.5.

The percentage variance from ideal is 5.0319% over and 5.0319% under.

The average percentage variance is 5.3061%.

The median deviation from perfect equality for all districts is 14,602.5.

The difference between the largest and smallest district is 39,626.

The maximum deviation (+) from the ideal is 19,788 (8.12%).

The maximum deviation (–) from the ideal is 19,838 (8.14%).

The population of 20 districts with the least population (number necessary to elect majority) is 4,645,051 = 50.15%.

The population of 19 districts with least population (number necessary to elect majority if Lt. Governor is used as tie breaker) is 4,398,013 = 47.48%.

The number of districts within 4.00% of ideal is 14.

The number of districts exceeding 6.00% of ideal is 19.

The number of districts within 3.00% of ideal is 10.

The number of districts exceeding

5.00% of ideal is 22.

The number of county breaks is 4.

The number of city/township moves in the county breaks at 6.

The number of city/township lines broken is 1 (Detroit).

The ratio of the largest district to the smallest district is 1.2 to 1.

SENATE

	District	Population	Over Average	Under Average	Percent Over Average	Percent Under Average
1	31	223,901		19,838		8.13
2	32	224,151		19,588		8.03
3	21	225,084		18,655		7.65
4	25	225,168		18,571		7.61
5	29	225,281		18,458		7.57
6	11	225,828		17,911		7.34
7	9	225,847		17,892		7.34

8	38	226,369		17,370	7.12
9	30	227,322		16,417	6.73
10	14	228,059		15,680	6.43
11	26	229,455		14,284	5.86
12	19	233,754		9,985	4.09
13	23	235,183		8,556	3.51
14	13	238,027		5,712	2.34
15	22	238,090		5,649	2.31
16	27	239,298		4,441	1.82
17	33	240,873		2,866	1.17
18	37	243,022		717	0.29
19	36	243,301		438	0.17
20	20	247,038	3,299		1.35
21	35	247,847	4,108		1.68
22	34	247,964	4,225		1.73
23	28	249,629	5,890		2.41
24	15	251,935	8,196		3.36
25	16	252,930	9,191		3.77
26	8	253,092	9,353		3.83
27	17	253,836	10,097		4.14

28	7	256,383	12,644		5.18
29	12	258,307	14,568		5.97
30	24	258,376	14,637		6.00
31	10	258,686	14,947		6.13
32	5	259,678	15,939		6.53
33	3	259,821	16,082		6.59
34	4	260,523	16,784		6.88
35	6	260,785	17,046		6.99
36	2	261,582	17,843		7.32
37	1	262,126	18,387		7.54
38	18	263,527	19,788		8.11

HOUSE

	District	Population	Over Average	Under Average	Percent Over Average	Percent Under Average
1	7	77,297		6,904		8.19
2	6	77,375		6,826		8.10
3	21	77,376		6,825		8.10
4	50	77,479		6,722		7.98

5	1	77,483	6,718	7.97
6	10	77,484	6,717	7.97
7	3	77,502	6,699	7.95
8	15	77,527	6,674	7.92
9	13	77,560	6,641	7.88
10	29	77,568	6,633	7.87
11	16	77,601	6,600	7.83
12	38	77,648	6,553	7.78
13	17	77,657	6,544	7.77
14	2	77,672	6,529	7.75
15	5	77,718	6,483	7.69
16	8	77,755	6,446	7.65
17	33	77,785	6,416	7.61
18	14	77,868	6,333	7.52
19	9	77,946	6,255	7.42
20	12	77,990	6,211	7.37
21	4	78,086	6,115	7.26
22	39	78,244	5,957	7.07
23	23	78,316	5,885	6.98
24	11	78,377	5,824	6.91

25	55	78,475	5,726	6.80
26	97	78,587	5,614	6.66
27	95	78,699	5,502	6.53
28	24	78,970	5,231	6.21
29	96	79,002	5,199	6.17
30	102	79,211	4,990	5.92
31	105	79,448	4,753	5.64
32	84	79,781	4,420	5.24
33	104	79,858	4,343	5.15
34	64	80,207	3,994	4.74
35	87	80,362	3,839	4.55
36	34	81,432	2,769	3.28
37	45	81,575	2,626	3.11
38	62	81,747	2,454	2.91
39	35	81,823	2,378	2.82
40	60	81,962	2,239	2.65
41	37	82,168	2,033	2.41
42	41	82,259	1,942	2.30
43	19	82,472	1,729	2.05
44	108	82,585	1,616	1.91

45	98	82,591		1,610	1.91
46	110	83,017		1,184	1.40
47	32	83,393		808	0.95
48	77	83,677		524	0.62
49	36	83,684		517	0.61
50	103	83,791		410	0.48
51	70	83,829		372	0.44
52	74	82,959		242	0.28
53	69	84,109		92	0.10
54	65	84,148		53	0.06
55	106	84,463	262		0.31
56	30	84,573	372		0.44
57	61	84,635	434		0.51
58	66	84,734	533		0.63
59	28	84,786	585		0.69
60	73	84,952	751		0.89
61	85	84,990	789		0.93
62	44	85,524	1,323		1.57
63	18	85,572	1,371		1.62
64	86	85,682	1,481		1.75

65	93	85,752	1,551	1.84
66	20	86,307	2,106	2.50
67	25	86,598	2,397	2.84
68	63	86,639	2,438	2.89
69	107	86,658	2,457	2.91
70	72	86,960	2,759	3.27
71	100	86,975	2,774	3.29
72	47	86,990	2,789	3.31
73	94	87,116	2,915	3.43
74	22	87,376	3,175	3.77
75	90	87,667	3,466	4.11
76	91	87,880	3,679	4.36
77	48	87,970	3,769	4.47
78	54	88,104	3,903	4.63
79	56	88,337	4,136	4.91
80	52	88,525	4,324	5.13
81	76	88,624	4,423	5.25
82	26	88,762	4,561	5.41
83	53	88,847	4,646	5.51

84	71	88,901	4,700	5.58
85	67	89,122	4,921	5.84
86	68	89,213	5,012	5.95
87	46	89,216	5,015	5.95
88	79	89,274	5,073	6.02
89	49	89,759	5,558	6.60
90	82	89,868	5,667	6.73
91	40	89,948	5,747	6.82
92	59	90,078	5,877	6.97
93	81	90,096	5,895	7.00
94	101	90,293	6,092	7.23
95	83	90,426	6,225	7.39
96	58	90,458	6,257	7.43
97	109	90,489	6,288	7.46
98	27	90,512	6,311	7.49
99	75	90,639	6,438	7.64
100	31	90,660	6,459	7.67
101	57	90,684	6,483	7.69
102	89	90,708	6,507	7.72
103	81	90,785	6,584	7.81

104	92	90,812	6,611	7.85
105	42	90,821	6,620	7.86
106	78	90,967	6,766	8.03
107	93	91,031	6,830	8.11
108	88	91,047	6,846	8.13
109	51	91,067	6,866	8.15
110	99	91,071	6,870	8.15

ORDER DIRECTING PLAN OF REAPPORTIONMENT

(May 21, 1982)

ORDER

Entered May 21, 1982

In this matter, having heard oral arguments by petitioners and respondents on March 5, 1982, and by petitioners and respondents and other interested persons on May 5, 1982, and

Having considered briefs filed by petitioners and respondents and written presentations filed by all other interested persons, and

Having considered certain modifications to the plans submitted to the Court for approval by Bernard J. Apol on April 27 and 29, 1982, and

Because no showing has been made that the modifications "do not cause

the plans submitted on April 27 and 29 to be more compliant with the rules and standards set forth in this Court's opinion" of March 25, 1982, and

Petitioner's motion for rehearing having been denied this date,

Now therefore, pursuant to the Court's opinion filed on March 25, 1982, the judgment order entered thereon as of the same date, and the orders of the Court dated February 3, 18 and 24, March 4, 5 and 19, April 30 and May 13, all 1982, it is hereby ordered and the Secretary of State is directed to publish as provided by law and hold the legislative elections for this year in accordance with the redistricting and reapportionment plans hereby approved and particularly described in the next paragraph.

The plans approved are:

1. The plans submitted to this Court for approval by Bernard J. Apol; for the Senate under the date of April 27, 1982, and for the House of Representatives under date of April 29, 1982;

2. Substituting for the provisions of parts of the said plans dated April 27 and 29, the superseding providions of the modifications dated and submitted by Bernard J. Apol for Court approval on May 12, 1982.

The clerk of this Court is directed to deliver forthwith to the office of the Secretary of State certified true copies of this order and of the approved plans and modifications.

The court retains jurisdiction for the purpose of taking such affirmative action as may be necessary to insure

an orderly election in 1982 pursuant to a constitutionally valid plan.

DISSENTING OPINION, JUSTICE MOODY

(May 21, 1982)

BLAIR MOODY, JR., J. (dissenting). I respectfully dissent from the final order of the Court. The law requires a closer adherence to the constitutional principle of "one person, one vote".

A majority of the Court has decided to adopt a modified reapportionment plan for the Michigan Senate and Michigan House of Representatives. Today's order does not adopt any changes in the criteria of our March 25 opinion directing the drawing of reapportionment plans under the supervision of Bernard J. Apol. In re Apportionment of State Legislature—1982, ante, p 96.

I join my colleagues in reaf-

firming the basic thrust of our opinion of March 25, which squarely faced the problem of an invalid apportionment scheme under our constitution and provided for the development of an apportionment plan to assure an orderly election in 1982.

However, this Court should approve a plan which would adhere to our duty to establish population as "the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies". Reynolds v Sims, 377 US 533, 567; 84 S Ct 1362; 12 L Ed 2d 506 (1964). Such a plan would necessitate the modification of the criteria in just one respect, the allowable population divergence. The Court had ample time to adopt an impartial plan which

would not exalt district representation over people representation.

Acting under its equitable judicial power,[1] the Court established in its opinion of March 25 the following primary criteria:

"Senate and House election district lines shall preserve county lines with the least cost to the federal principle of equality of population between election districts consistent with the maximum preservation of county lines and without exceeding the range of allowable divergence under the federal constitution which, until the United States Supreme Court declares otherwise, shall be deemed to be 16.4% (91.8-108.2%).

"Where it is necessary to break

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[1] Const 1963, art 6, § 1.

county lines, because otherwise the range of allowable divergence would be exceeded, there shall be shifted the fewest cities or townships necessary to reduce the population divergence sufficiently to bring it within the range of allowable divergence.

"Because of the narrowness of the range of allowable divergence, we anticipate that only one plan will organize the counties with the least breaking of county lines." (Italicized language added after March 25.) Ante, p 141.

The allowable population divergence of 16.4% (±8.2%) was lifted from Mahan v Howell, 410 US 315; 93 S Ct 979; 35 L Ed 2d 320 (1973). Mahan held that a plan for the Virginia House of Delegates which included an extreme allowable total deviation of 16.4%

(+6.8%, -9.6%) was not unconstitutional. Written in the abstract, prima facie, such a deviation may be equitably and constitutionally acceptable. However, upon application in this state and in this case, the anticipated extreme divergence became commonplace. The perceived exception virtually became the norm.

A factual analysis of the Court's plan reveals a devastating impact upon the principle of population equality. Application of the allowable population deviation in the Court's plan results in substantial dilution or enhancement of votes in many districts throughout the state. An allowable deviation of 16.4% as applied to Michigan Senate districts which have an ideal population of 243,739 is ±19,987 persons

(±8.2%). This amounts to a total potential deviation from the average of almost 40,000 persons among Senate districts. The 16.4% deviation as applied to Michigan House districts with an ideal population of 84,201 is ±6,904. This results in a potential variance of almost 14,000 persons among House districts.

Under the plan drawn and now approved by the Court, the total deviation between the largest and smallest Senate districts is 39,626 persons (16.26%). The largest district in terms of population, i.e., where each vote is worth the least, has a deviation exceeding the ideal by 19,788 (±8.12%); the smallest, i.e., where each vote is worth the most, is 19,838 persons (-8.14%) less than the ideal. A similar

result is reflected in the House plan. The most populous district has a deviation of 6,870 (+8.16%); the smallest is 6,904 persons (-8.2%) under the ideal-sized House district. The total maximum population deviation is 13,774 (16.36%).

It becomes difficult to swallow the conclusion that a difference between Senate districts of 39,626 persons and House districts of 13,774 persons is equitable and does not impair the principle of equal representation. Yet, if these results truly were the exception and only occurred in the rare occasion, perhaps they would be equitably and constitutionally digestible.

What is of special significance, however, is that a great number of districts have a substantial population

deviation from the ideal-sized district and fall near the extremes of the allowable divergence.

Twenty-three of 38 Senate districts have a population deviation in excess of 10,000 persons (±4.1%). Eleven of these districts fall that far below an ideal-sized district. Twelve have more than 10,000 persons above a district with perfect equality of population. Considering another comparison, 22 of 38 districts have a population deviation in excess of 12,187 (±5%). Eleven districts have a greater than 5% deviation above the ideal, and 11 fall more than 5% below the ideal. In addition, 24 Senate districts out of 38 have a deviation in excess of 9,750 persons (±4%). Finally, the average deviation from the ideal-

sized district of 243,739 is 12,265 persons (±5.03%).

This is not the case where a substantial deviation from the norm is unusual. Unfortunately the plan, once unfolded, resulted in many population differentials which gravitated toward the extremes.

A similar partern is reflected as to House districts. The average percentage variation from the ideal-sized district of 84,201 is ±5.07%. Translated into persons, this reflects that there is an average deviation of 4,267 persons per House district. Fifty-four of 110 House districts have a population deviation in excess of 5,000 persons (±5.94%). Sixty-four of 110 have a population deviation in excess of 4,210 persons (±5%). Seventy-one have a devi-

ation in excess of 3,368 (±4%).

It becomes apparent that the application of the Court's criteria accentuates the extreme and not the norm. Restricting the allowable population divergence would in great measure establish population equality as the primary principle to be recognized.

The plan of the Court fails to measure up to the constitutional requirement that a court-ordered reapportionment plan should formulate districts that are "as nearly of equal population as is practicable". In Mahan, upon analyzing the reapportionment plan for the Virginia House of Delegates, the United States Supreme Court discussed several methods of measuring population equality. One measure, the population ratio between

the largest and smallest district, is the same in the Michigan plan as in Mahan, 1.18 to 1, since this plan was patterned after Mahan.

However, applying other population relationships discussed in Mahan to the Michigan plan dramatizes its constitutional deficiency. In the Michigan Senate plan, the average percentage variation from perfect equality is ±5.03%. (That is 12,265 persons from the ideal-sized district). In the House plan, the average percentage deviation is ±5.07%. (That is 4,269 persons from the ideal district). In Mahan, the average deviation was only ±3.89%.

Also of significance, as has been emphasized, are the number of districts which fall near the extreme of the allowable deviation. In the plan of

the Court, 19 of 38 Senate districts (50%) and 52 of 110 House districts (47.27%) Have a population deviation greater than 6%. Only 9 out of 52 districts (17.3%) had the same deviation in Mahan. Furthermore, only 14 of 38 Michigan Senate districts (36.84%) and 39 of 110 House districts (35.45%) fall within 4% of the ideal, whereas in Mahan, the figure was significantly higher: 35 out of 52 districts (67.31%).

Thus, the surface 16.4% standard of Mahan is but the tip of the iceberg of an appropriate constitutional evaluation. While the 16.4% standard of Mahan may be met, "the fact that a 10% or 15% variation from the norm is approved in one State has little bearing on the validity of a similar variation in another State". Swann v Adams, 385 US

440, 445; 87 S Ct 569; 17 L Ed 2d 501 (1967), quoted in Mahan v Howell, supra, 328.

An unfolding of the Court's plan reflects that close adherence to a percentage deviation that is at the outside limits of constitutionality cannot be squared with the overriding constitutional objective of substantial equality of population among districts. The reapportionment criteria should strive to create districts as equal, not as unequal, as possible.

"Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State." Reynolds, supra, 568. Such a

conclusion becomes more self-evident when a substantial divergence from an ideal-sized district is present in the majority of Senate and House districts.

Today's plan follows the Court's opinion as closely as possible within self-imposed time constraints. Mr. Apol performed admirable service following the Court's directives. However, rigid adherence to the criteria concerning population deviation and county lines, written in the abstract, is not required, nor is it advised, when modifications may be made to comport substantially closer to the primary principle of population equality. The Court should profess no vested interest in a certain allowable divergence when experience shows it can be substantially improved to assure constitutional

acceptability and still achieve an impartial plan.

Such a modified plan could have been devised following the same boundary line criteria outlined in the reapportionment opinion, but permitting only a de minimis deviation from population equality. Cf. Gaffney v Cummings, 412 US 735; 93 S Ct 2321; 37 L Ed 2d 298 (1973); White v Regester, 412 US 755; 93 S Ct 2332; 37 L Ed 2d 314 (1973); Apportionment of Wayne County Board of Comm'rs—1982, post, p. 254 (BLAIR MOODY, JR., J., dissenting).

A total allowable divergence of 5% (±2.5%) would certainly fall within permissible standards. Reducing the total allowable divergence to 8% (±4%) would eliminate much of the inequality extant in the present plan. Since the

other criteria of the Court, particularly as interpreted by the majority, gravitates population differentials toward outside allowable limits, any further divergence would be potentially excessive. It is apparent more county lines would be broken than under the Court's plan. However, population equality within acceptable limits should take precedence over unbroken county lines.

The importance of moving to a quick conclusion of this problem is recognized. However, a "rush to judgment" may not fully serve the citizens of this state. Time was available[2] to develop a plan allowing only a de

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[2]The Court was advised it would take only one week to develop such a plan.

minimis population deviation which follows the requirements of the Equal Protection Clause—one that does not include constitutionally unacceptable line-drawing.

Reasonable adherence to boundary lines is a legitimate and useful method in an effort to minimize deliberate gerrymandering and has a genesis in Michigan history. The Court in its opinion of March 25 adopted criteria with respect to boundary lines in order to aid in the drafting of a neutral reapportionment plan.

"But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in

the particular legislative body, then the right of all of the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired". Reynolds , supra, 531. Thus, this Court cannot, under the guise of "state policy", supersede the constitutional principle of substantial equality among election districts. Connor v Finch, 431 US 407, 420; 97 S Ct 1828; 52 L Ed 2d 465 (1977).

A substantial movement away from population equality in so many districts caused by excessive adherence to boundary lines turns the "constitutional requirements of equality on its head and exalt[s] district representation over people representation". Apportionment of Wayne County, post, p. 242 (BLAIR MOODY, JR., J., dissenting).

As was stated in Reynolds, supra, 566, "a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us".

For the foregoing reasons, I dissent from the adoption of the Court's plan and would, in lieu of granting the motion for rehearing, reduce the allowable population divergence in the opinion of March 25 and direct the redrafting of a plan under such modification.

MICHIGAN CONSTITUTION OF 1963,

article IV

Section 2

Senators, number, term

"Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the terms of office of the governor.

"Senatorial districts, apportionment factors

"In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the state's popula-

tion as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.

"Apportionment rules

"In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:

"(1) Counties with 13 or more apportionment factors shall be entitled to a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allo-

cated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

"(2) Counties having less than 13 apportionment factors shall be entitled to a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more

than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.

"(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact. contiguous, and as nearly uniform in shape as possible."

Section 3

"Representatives, number, term; contiguity of districts

"Sec. 3. The house of representatives shall consist of 110 memebers elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land.

"Representative areas, single and multiple county

"Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the popu-

lation of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.

"Apportionment of
representatives to areas

"After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.

"Districting of single county
area entitled to 2 or
more representatives

"Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:

"(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.

"(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous ter-

ritory as nearly square in shape as possible.

"Districting of multiple
county representative areas

"Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines."

Section 6

"Commission on
Legislative apportionment

"Sec. 6. A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor

was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political party organization: (1) the upper peninsula; (2) the northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the

counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.

"Eligibility to membership

"No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.

Appointment, term, vacancies

"The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment

or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each appointment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.

"Officers, rules of procedure, compensation, appropriation

"The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the

commission to carry out its activities.

"Call to convene,

apportionment, public hearings

"Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and apportion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the mem-

bers of the commission. The commission shall hold public hearings as may be provided by law.

"Apportionment plan, publication; record of proceedings

"Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.

"Disagreement of commission; submission of plans to supreme court

"If a majority of the commission can-

not agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.

"Jurisdiction of supreme court on elector's application

"Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commis-

sion, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution."

STATE OF MICHIGAN

IN THE SUPREME COURT

IN RE APPORTIONMENT OF STATE LEGISLATURE-1982

_____/

A. ROBERT KLEINER, ROSIE BOARD, FRANCIS BROUILLETTE and ERMA LURVEY, Democratic Members of the Michigan Commission on Legislative Apportionment,

No. 68777

Appellants,

v

RICHARD SANDERSON, CLARE DANIELS, JOHN PAYANT, and LOU ANN TAYLOR, Republican Members of the Michigan Commission on Legislative Apportionment,

Appellees.

_____/

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that A. Robert Kleiner, Rosie Board, Francis

Brouillette and Erma Lurvey hereby appeal to the Supreme Court of the United States from the final judgment order of the Supreme Court of the State of Michigan, dated March 25, 1982, and from the Orders dated May 21, 1982 denying application for rehearing and directing adoption of a legislative apportionment plan.

This appeal is taken pursuant to 28 USC § 1257(2).

MARSTON,SACHS,NUNN,KATES,
KADUSHIN & O'HARE

BY _____
Theodore Sachs (P 19827)

Attorneys for appellants

1000 Farmer
Detroit, MI 48226
(313) 965-3464

DATED: August 5, 1982

STATE OF MICHIGAN

IN THE SUPREME COURT

A. ROBERT KLEINER, ROSIE BOARD, FRANCIS BROUILLETTE and ERMA LURVEY, Democratic Members of the Michigan Commission on Legislative Apportionment,

Appellants,

v.

RICHARD SANDERSON, CLARE DANIELS, JOHN PAYANT, and LOU ANN TAYLOR, Republican Members of the Michigan Commission on Legislative Apportionment,

Appellees.

No. 68777

[In Re Apportionment of State Legislature- 1982]

/

PROOF OF SERVICE OF NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

STATE OF MICHIGAN)
COUNTY OF WAYNE)SS

Ella Kissee, being first duly sworn, deposes and says that she is a secretary in the office of Marston,

Sachs, Nunn, Kates, Kadushin & O'Hare, attorneys for appellants herein; that on the 5th day of August, 1982, she did serve true copy of the foregoing NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES on counsel of record by placing said Notice in a postage prepaid envelope, deposited in a U.S. mailbox addressed to each of the following:

Robert L. Henry, Esq.
(attorney for Appellees)
211 E. Huron, Suite 1
Ann Arbor, MI 48104

Gary P. Gordon, Esq.
Assistant Attorney General
650 Law Building
525 W. Ottawa
Lansing, MI 48913

Robert A. Sedler, Esq.
(Attorney for Coleman Young, et al)
Wayne State University Law School
Detroit, MI 48202

Miguel Ortiz, Esq.
(Attorney for Southwest Committee
for Fair Representation)
9194 Rathbone
Detroit, MI 48209

Jerold Lax, Esq.
(Attorney for William Faust)
320 City Center Building
Ann Arbor, MI 48104

Clerk, Michigan Supreme
Court
P.O. Box 30052
Lansing, MI 48909.

S/_____

Subscribed and sworn to before
me this 5th day of August, 1982

S/_____
Notary Public, Wayne Co., Mich.
My commission expires: 8/8/84